

### **REMARKS**

This is in response to the final Office Action mailed on June 25, 2009. In that Office Action, claims 23-33 were rejected under 35 USC 112, first paragraph for allegedly lacking support for the limitation of "said drink being present at a temperature of at least 40 °C. Claims 23-33 were also rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,235,274 (Lou) as applied to claims 23, 24, 26-28 and 31, and in further view of Wason as applied to claim 25 and in further view of U.S. Patent No. 2,513,813 as applied to claims 29-30, 32, and 33. Applicant respectfully disagrees.

In response to the subject final Office Action, Applicant amended the claims and presented arguments that the claims had adequate support in the specification and that Lou failed to teach the amended claims. The subsequently issued Advisory Action while not entering the amendment, the Examiner indicated that the remarks were persuasive and that if the amendment were entered the 112 rejection would be withdrawn. The Examiner also indicated that Applicant would be required to explain how the introduction of additional steps or components such as those disclosed by Lou would materially change the characteristics of the invention.

Accordingly, applicant has reintroduced the amendments to the claims as originally presented in the un-entered amendment after final. With respect to the rejection of the claims under 35 USC 112, first paragraph, Applicant respectfully submits that the specification provides more than adequate support for the limitation of "said drink being present at a temperature of at least 40° C. In particular, paragraph [0023] states that the carrier materials loaded with the flavoring agents are added to drinks, and that such drinks are usually present at a temperature of greater than or equal to 40 °C. Accordingly, applicant respectfully requests reconsideration and withdrawal of this rejection of claims 23-33

As for the rejection under 103 in view of Lou, Applicant submits that the additional steps disclosed in Lou are now excluded from the method recited in claim 23 as currently amended since these additional steps materially and substantially affect the novel nature of the method of claim 23 as discussed in more detail below.

In the claimed method, a particulate carrier material is loaded with flavoring agents and the loaded carrier material particles are added to a drink. The claim allows the loaded carrier particle to be admixed with a raw material for drinks. The description discloses in paragraph [0027] instant powders as an example for such a raw material and distinguishes the term "admixed" from adding to a functional unit, such as an effervescent tablet. The term "admixed" as used in the claim and in the description therefore refers to a mixing of the particulate carrier material with other material in a manner by which the particles of the carrier material retain their identity in the mixture. Otherwise, the resulting mixture would not add the particles of step (a) to a drink.

The description also discloses in paragraph [0026] that the carrier material may be coated after it has been loaded with the flavoring agents. In such a coating process, each particle of the loaded carrier material is converted into a coated particle, i.e. the particles of the carrier material retain their individuality and essentially their size.

Therefore, in the claimed process the product of step (a) is a loaded particulate material and it is this particulate material that has to be added to the drink in step (b). This excludes any intermediate steps, where the particulate material is substantially modified by losing its particulate nature.

In the process as taught in Lou et al., the particles which are added to a drink are materially different from the carrier material. In the process of Lou et al., the loaded carrier particles are dispersed in a saccharide melt in step (e), which is solidified in step (f) to a tow. In subsequent step (g), the solidified tow is converted to particles by grinding and it is these particles which are added to a drink, as taught in column 3, line 65 to column 4, line 3 of Lou et al. At a high ratio of silica powder carrier material to saccharide melt, the process of Lou et al. will lead to particles of solidified saccharide melt, where each particle has a multitude of silica particles embedded, whereas at a low ratio of silica powder carrier material to saccharide melt, the process of Lou et al. will lead to particles of solidified saccharide melt, where a substantial fraction of the particles contain no silica at all. Lou therefore teaches to add particles of a solidified saccharide melt to a beverage, which particles may contain a multitude of embedded silica particles but may also contain silica at all. Such particles are materially different from the flavor compound-bearing silica powder prepared in step (a) of Lou et al., since

a saccharide melt particle of step (g) does not correspond to a particle of the silica powder of step (a) of Lou et al.

In the process of Lou et al., the particles added to the drink are particles of a solidified saccharide melt. The loaded silica particles made in step (a) of Lou et al. are substantially modified in steps (e) and (f) of Lou et al., where they are converted to a tow and lose their property of being a particulate material. The subsequent step (g) does not regenerate the particles from step (a), but forms new particles which are independent in number and size from the particles obtained in step (a). The process of Lou et al. therefore does not read upon amended claim 23. Accordingly, Applicant requests reconsideration and withdrawal of the rejections of claims 23-33. A notice of allowance is respectfully requested.

With the electronic filing of this paper, Applicant has paid via Deposit Account 50-1039, \$810.00 for the RCE fee and \$490.00 for a Two-month Extension of Time fee. It is believed that no additional fees are due. However, if any fees are applicable, kindly charge any such fees to our deposit account number 50-1039.

Respectfully submitted,

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